

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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|----------------------------|---|------------------------------------|
| MAURICE ALLEN | : | Case No. 1:02cv492 |
| | : | |
| Plaintiff, | : | Judge Spiegel |
| | : | Magistrate Judge Hogan |
| v. | : | |
| | : | |
| DEERFIELD MANUFACTURING | : | PLAINTIFF'S MEMO IN |
| INCORPORATED, A SUBSIDIARY | : | OPPOSITION TO DEFENDANT'S |
| OF ICE INDUSTRIES | : | <u>MOTION TO STRIKE REPLY MEMO</u> |
| | : | |
| Defendant. | : | |

On November 16, 2005, Defendant filed a motion to strike Plaintiff's reply memorandum in support of his objections to the Magistrate's Report and Recommendation. Alternatively, Defendant argues that the Court should allow Defendant to file a sur-reply memo in the event the Court decides to consider Plaintiff's reply memo.

While there is no dispute that Rule 72 and the notice attached to the Report and Recommendation do not explicitly mention a reply in support of objections, Defendant cites no authority for the proposition that a such a memo is forbidden.

The Court has broad discretion in the review of a report and recommendation. See *Freeman v. County of Bexar*, 142 F.3d 848 (5th Cir. 1998). Such discretion should include consideration of a reply memo from the party adversely affected by the report. Defendant had the "last word" in summary judgment briefing. Plaintiff should have it now.

Respectfully submitted,

s/ David Torchia
David Torchia – 0015962
Tobias, Kraus & Torchia
911 Mercantile Library Building
414 Walnut Street
Cincinnati, Ohio 45202
(513) 241-8137
Attorney for Plaintiff
davet@tktlaw.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been filed electronically and will be served via the ECF system upon Renisa A. Dorner, Esq., Wise & Dorner, Ltd., 151 N. Michigan Street, Suite 333, David Building, Toledo, Ohio 43624 on this 12th day of December, 2005.

s/ David Torchia
David Torchia – 0015962